

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Casciano et al. :
: Art Unit: 3624
Serial No.: 09/681,408 :
: Examiner: Alain L. Bashore
Filed: March 30, 2001 :
:
For: METHODS AND SYSTEMS :
FOR IMPLEMENTING A :
PROFITABILITY MODEL :

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
Mail Stop AMENDMENT
Washington, D.C. 20231

Sir:

The Office Action mailed January 26, 2005 has been carefully reviewed and the following remarks have been submitted in consequence thereof. In response to the election requirement set forth in the Office Action, Applicants elect, with traverse, for prosecution in this application all claims of Group II as identified in the Office Action. Claims 7-27 and 37-44, drawn to apparatus, are in the elected claim group.

Reconsideration of the restriction requirement imposed under 35 U.S.C. § 121 is respectfully requested. The restriction requirement is traversed because the inventions set out by the claims in Groups I and II are clearly related. Applicants submit that a thorough search and examination of either claim group would be relevant to the examination of the other group and would not be a serious burden on the Examiner. Indeed, the claims of Group I and the claims of Group II are encompassed by a single class (Class 705) and by a single subclass (Subclass 36), and it is not evident how the searching of a single class and single subclass could present an unreasonable burden on the Examiner. Because the claims in Group I and II are encompassed by a single class and single subclass, the assertion that the claim groups have acquired a separate

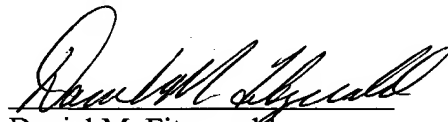
status in the art because of their recognized divergent subject matter is respectfully traversed and submitted to be unsupportable on the present record. Therefore, to the extent that the restriction requirement relies on this assertion, it is respectfully submitted that the restriction requirement is improper and should be withdrawn.

The restriction requirement with respect to the claims in Groups I and II is further traversed. The Office Action asserts that the claims in Groups I and II are distinct because the apparatus as claimed (Group II) "can perform a materially different process such as utilizing parameters other than 'trigger levels' and 'workload drivers' to achieve allocations." Applicants note that the claims in Groups I and II both include "trigger levels" and "workload drivers" claimed in a similar fashion. Thus, Applicants respectfully submit that the method recited in Claims 1-6 and 54-58 (Group I), and the apparatus recited in Claims 7-27 and 37-44 (Group II) are related and are not patentably distinct, and that the restriction requirement should be withdrawn.

Further, the Office Action has not shown the claims of Group I and the claims of Group II are patentably distinct in accordance with MPEP §806.05(e). Particularly, the Office Action has not shown that the apparatus as claimed can be used to practice another and materially different process.

In addition, requirements for restriction are not mandatory under 35 U.S.C. Accordingly, reconsideration of the restriction requirement is requested.

Respectfully Submitted,



Daniel M. Fitzgerald
Registration No. 38,880
ARMSTRONG TEASDALE LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102-2740
(314) 621-5070